# STATE OF NEW YORK DEPARTMENT OF STATE

ONE COMMERCE PLAZA 99 WASHINGTON AVENUE ALBANY, NY 12231-0001 HTTPS://DOS.NY.GOV KATHY HOCHUL GOVERNOR ROBERT J. RODRIGUEZ SECRETARY OF STATE



October 19, 2022

Emily C Burns Clerk Madison County Board of Supervisors 138 N Court St, PO Box 635 Wampsville NY 13163

RE: County of Madison, Local Law 6 2022, filed on October 14 2022

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, <a href="https://www.dos.ny.gov.">www.dos.ny.gov.</a>

Sincerely, State Records and Law Bureau (518) 473-2492



# MADISON COUNTY BOARD OF SUPERVISORS

John M. Becker, Chairman Mark Scimone, County Administrator Emily Burns, Clerk 138 N. Court St., PO Box 635 Wampsville, NY 13163 Phone: 315/366-2201

Fax: 315/366-2502



October 12, 2022

State Records and Law Bureau One Commerce Plaza 99 Washington Ave. Albany, New York 12231

RE: Local Law No. 6-2022 Authorizing the County of Madison to Impose a Tax on Real Estate Transfers

#### Dear Sir/Madam:

Enclosed please find the original of Local Law No. 6 of 2022 for filing which was adopted by the Madison County Board of Supervisors on October 11, 2022.

If you have any questions regarding this local law, please call me at (315) 366-2201. Thank you in advance for your assistance.

Very truly yours,

Emily C. Burns, Clerk

eb/ enclosure (Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

<b>X</b>	County  Of  Of  Of  Of  Of  Of  Of  Of  Of  O	Madison	
	Local La	aw No6 of the year 2022	
		A Local Law Authorizing the County of Madison to Impose a Tax on	Real Estate
		Transfers	
Be	e it enact	ed by the Board of Supervisors  (Name of Legislative Body)	of the
X	County		
	MX of	Madison	as follows:
0	XXXXX		

See attached pages

(If additional space is needed, attach pages the same size as this sheet, and number each.)

## MADISON COUNTY LOCAL LAW NO. 5 OF 2022

## A LOCAL LAW AUTHORIZING THE COUNTY OF MADISON TO IMPOSE A TAX ON REAL ESTATE TRANSFERS

**BE IT ENACTED**, by the Board of Supervisors of Madison County, New York as follows:

**SECTION 1. TITLE**. This Local Law shall be titled "A Local Law Authorizing the County of Madison to Impose a Tax on Real Estate Transfers".

SECTION 2. PURPOSE AND INTENT. The purpose of this law is to authorize Madison County, pursuant to the provisions of Article 31-H of the Tax Law of the State of New York, to impose an additional tax on real estate transfers.

**SECTION 3. AUTHORITY**. This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law, and Article 31-H of the Tax Law of the State of New York.

**SECTION 4. DEFINITIONS**. When used in this Local Law, unless otherwise expressly stated, the following terms shall have the meanings indicated:

- 1. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.
- 2. "Controlling interest" means (a) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust or other entity, fifty percent or

more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.

- 3. "Real property" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the county of Madison. It shall not include rights to sepulture.
- 4. "Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.
- (a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.
- (b) In the case of a creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to renew less the value of the remaining prime lease rental payments required to be made.

- (c) In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.
- (d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.
- (e) In the case of (1) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (2) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.
- 5. "Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to, sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain,

conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code.

- 6. "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.
- 7. "Grantor" means the person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" means the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.
- 8. "Grantee" means the person who obtains real property or interest therein as a result of a conveyance.

- 9. "Recording officer" means the county clerk of the County of Madison.
- 10. "Treasurer" means the chief fiscal officer of the County of Madison.

SECTION 5. IMPOSITION OF TAX. For the period commencing November 1, 2022 and ending December 1, 2025, unless further extended by Local Law of the Board of Supervisors, notwithstanding any other laws, there is hereby imposed, in Madison County, a tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof. This Local Law applies to any conveyance occurring on or after November 1<sup>st</sup>, 2022, but shall not apply to conveyances made on or after November 1<sup>st</sup>, 2022 pursuant to binding written contracts entered into prior to November 1<sup>st</sup>, 2022, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit or other facts and circumstances as determined by the treasurer.

## **SECTION 6. PAYMENT OF TAX.**

- 1. The transfer tax imposed pursuant to this Local Law shall be paid to the treasurer or the recording officer acting as the agent of the treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article Thirty-One, Section 1410 of the New York State Tax Law is required to be paid. Such treasurer or recording officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.
- 2. A return shall be required to be filed with such treasurer or recording officer for purposes of the real estate transfer tax imposed pursuant to this Local Law at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by Article Thirty-One, Section 1409 of the New York State Tax Law. The return, for purposes of the real estate transfer tax imposed pursuant to this article, shall be a photocopy or carbon copy of the

real estate transfer tax return required to be filed pursuant to Section 1409. However, when an apportionment is required to be made pursuant to Section 16 of this Local Law, a supplemental form shall also be required to be filed. The real estate transfer tax returns and supplemental forms required to be filed pursuant to this section shall be preserved for three years and thereafter until such treasurer or recording officer orders them to be destroyed.

3. The recording officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and the tax imposed pursuant to this article shall have been paid as provided in this section.

## **SECTION 7. LIABILITY FOR TAX.**

- 1. The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed pursuant to this Local Law or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee.
- 2. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

#### **SECTION 8. EXEMPTIONS.**

1. The following shall be exempt from payment of the real estate transfer tax:

- (a) The state of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada).
- (b) The United Nations, the United States of America and any of its agencies and instrumentalities.

The exemption of such governmental bodies or persons shall not, however, relieve a grantee from the liability for the tax.

- 2. The tax shall not apply to any of the following conveyances:
- (a) Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);
  - (b) Conveyances which are or were used to secure a debt or other obligation;
- (c) Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;
- (d) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts;
  - (e) Conveyances given in connection with a tax sale;
- (f) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;
  - (g) Conveyances which consist of a deed of partition;

- (h) Conveyances given pursuant to the federal bankruptcy act;
- (i) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property; and
- (j) Conveyances of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than two hundred thousand dollars and such property was used solely by the grantor as his or her personal residence and consists of a one, two or three-family house, an individual residential condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.

## **SECTION 9. CREDIT.**

A grantor shall be allowed a credit against the tax due on a conveyance of real property to the extent tax was paid by such grantor on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by such grantor. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date), and the denominator of which is the total value of the consideration used to compute such tax paid.

## SECTION 10. COOPERATIVE HOUSING CORPORATION TRANSFERS.

1. Notwithstanding the definition of "controlling interest" contained in Subdivision 2 of Section 4 of this Local Law, or anything to the contrary contained in Subdivision 5 of Section 4 of this Local Law, the tax imposed pursuant to this Local Law shall apply to (a) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and (b) the subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in paragraph (a) of this subdivision, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of the credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in paragraph (a) of this subdivision and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax, on a conveyance described in paragraph (a) of this subdivision, below zero, nor

shall any such credit be allowed for a tax paid more than twenty-four months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in paragraph (a) of this subdivision.

2. Every cooperative housing corporation shall be required to file an information return with the treasurer by July fifteenth of each year covering the preceding period of January first through June thirtieth and by January fifteenth of each year covering the preceding period of July first through December thirty-first. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the treasurer may deem necessary, including, but not limited to, the names, addresses and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance and the consideration paid for such conveyance.

## **SECTION 11. DESIGNATION OF AGENTS**.

The treasurer is authorized to designate the recording officer to act as its agent for purposes of collecting the tax authorized by this Local Law. The treasurer shall provide for the manner in which such person may be designated as its agent subject to such terms and conditions as it shall prescribe. The real estate transfer tax shall be paid to such agent as provided in Section 6 of this Local Law.

## **SECTION 12. LIABILITY OF RECORDING OFFICER**.

A recording officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this Local Law that he or she shall collect so long as he or she shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him or her by the person paying the tax.

## **SECTION 13. REFUNDS.**

Whenever the treasurer shall determine that any moneys received under the provisions of this Local Law were paid in error, it may cause such moneys to be refunded pursuant to such rules and regulations it may prescribe, provided any application for such refund is filed with the treasurer within two years from the date the erroneous payment was made. When making any findings or determinations the treasurer may rely upon any findings or determinations of the commissioner and any rules and regulations promulgated pursuant to Article Thirty-One of the Tax Law of the State of New York.

## SECTION 14. DEPOSIT AND DISPOSITION OF REVENUE.

All taxes collected or received by the treasurer or his or her duly authorized agent under the provisions of this Local Law shall be deposited into an account designated by the treasurer or his or her agent. Any officer designated to collect, receive, or deposit such revenue shall maintain a system of accounts showing the revenue collected or received from the tax imposed pursuant to this Local Law. All revenue derived from the imposition of this transfer tax shall be deposited into the general fund of the County of Madison and shall be used for purposes deemed appropriate by the legislative body of the County of Madison.

## **SECTION 15. JUDICIAL REVIEW.**

1. Any final determination of the amount of any tax payable under Section 6 of this Local Law shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under Article Seventy-Eight of the Civil Practice Law and Rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under Article Seventy-Eight of the Civil Practice Law and Rules shall not be instituted unless (a) the amount of any tax

sought to be reviewed, with such interest and penalties thereon as may be provided for by local law shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (b) at the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination, plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

2. Where any tax imposed hereunder shall have been erroneously, illegally or unconstitutionally assessed or collected and application for the refund or revision thereof duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article Seventy-Eight of the Civil Practice Law and Rules; provided, however, that (a) such proceeding is instituted within four months after the giving of the notice of such denial, (b) a final determination of tax due was not previously made, and (c) an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

3. In any proceedings instituted pursuant to this Local Law the rules and regulations of the commissioner shall be applied where applicable.

## **SECTION 16. APPORTIONMENT.**

Where real property is located partly within the boundaries of the County of Madison, and partly without, the amount of tax imposed by this local Law shall be determined on a pro rata basis, based upon the assessed value of that portion of real property situate within the boundaries of the County of Madison.

#### **SECTION 17. RETURNS TO BE SECRET.**

- 1. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the treasurer or any officer or employee of the county of Madison or any person engaged or retained by such county on an independent contract basis to divulge or make known in any manner the particulars set forth or disclosed in any return required under a local law enacted pursuant to this article. However, that nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for purposes of this section.
- 2. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the county in any action or proceeding involving the collection of a tax due under a local law enacted pursuant to this article to which such county or an officer or employee of such county is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of a local law enacted pursuant to this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the

court may require the production of, and may admit in evidence, so much of said returns or of the facts shown thereby, as are pertinent to the action or proceeding and no more.

- 3. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance or the duly authorized representative of a grantor or grantee of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the legal representatives of such county of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.
- 4. Any officer or employee of such county who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

## **SECTION 18. FORECLOSURE**.

Where the conveyance consists of a transfer of property made as a result of an order of the court in a foreclosure proceeding ordering the sale of such property, the referee or sheriff effectuating such transfer shall not be liable for any interest or penalties that are authorized pursuant to this article or article thirty-seven of this chapter.

## **SECTION 19. EFFECTIVE DATE.**

This Local Law shall take effect November 1, 2022, in accordance with the provisions of the Municipal Home Rule Law.

# (Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

L	6	of 20 2	2 of
	9	was duly pas	sed by the
20 22	in accorda	ance with the	applicable
20	III dooordi	21100 With the	арриоссия
repassag	e after disap	proval by th	e Elective
).		of 20	of
		was duly pas	ssed by the
20	and was (	(approved)(no	ot approved)
	and wa	as deemed d	uly adopted
ns of law.			
O		of 20	of
		was duly pa	ssed by the
20	and was	(approved)( iii	ot approved)
	on	2	
-::\		received the	offirmative
nissive) rete ecial)(annu	al) election he	eld on	allilliative
,,,	,		
lid notition	was filed red	nuesting ref	erendum.)
na pennon ).	was med red	of 20	of of
20	and was	(approved)(n	ot approved)
0	on	_20	_ Such local
	J	l an of	
uch reteren	aum was filed	as or	
n ne	repassag	repassage after disapped and was (and was of law.	of 20 of 20 was duly pa on 20 and was (approved)( n on 2 issive) referendum, and received the cial)(annual) election held on id petition was filed requesting ref

Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by p	etition.)	
I hereby certify that the local law annexed hereto, designated as I the City of having been submitted to the Municipal Home Rule Law, and having received the affirmative thereon at the (special)(general) election held on	referendum pursuant to the provisions	of 20 of of section (36)(37) of ors of such city voting
6. (County local law concerning adoption of Charter.)  I hereby certify that the local law annexed hereto, designated as lot the County of State of New York, having November 20, pursuant to subdivisions 5 and received the affirmative vote of a majority of the qualified elector qualified electors of the towns of said county considered as a unit	ng been submitted to the electors at th d 7 of section 33 of the Municipal Home rs of the cities of said county as a unit	Rule Law, and having and a majority of the
(If any other authorized form of final adoption has been follo I further certify that I have compared the preceding local law we correct transcript therefrom and of the whole of such original loparagraph	vith the original on file in this office ar	nd that the same is a manner indicated in own or Village Clerk or
(Seal)	Date: October 12, 2022	